

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.567 of 1999

Reserved on 30.11.2006

Date of decision 15 -12-2006

State of H.P.

Appellant

Versus

Kuldeep Kumar

Respondent

Coram:

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?¹

For the appellant : Mr.Ashutosh Burathoki,
 Addl. Advocate General.

For the respondent: Mr.T.S.Chauhan, Advocate.

V.K.Ahuja, J.

This is an appeal filed by the appellant-State of Himachal Pradesh against the judgment of the court of learned Judicial Magistrate Ist Class, Bilaspur dated 17.3.1999, vide which the accused-respondent was acquitted of the charge framed against him under Sections 336 and 338 of the IPC.

Briefly stated the facts of the case are that on 22.4.1997 at about 12.15 during night time a report was lodged at Police Station Sadar by one Ram Parkash accompanied by Sh. Randip Parmar, Advocate in which it was alleged that on the previous night i.e. 21.4.1997 at 10 a.m. the complainant was purchasing a pan from the shop of one Jagdish and there Kuldeep Kumar present respondent was standing there along with his van and he was giving beatings to a mentally sick person that he was not walking properly on the road. It was further alleged that the complainant and advocate Parmar asked Kuldeep Kumar as to why he was giving beatings to a mentally sick person. On this Kuldeep Kumar

¹ Whether reporter of local papers are allowed to see the judgment ?

caught hold of the complainant from the neck and then Parmar intervened and one Inder Singh separated the complainant and accused. Thereafter the accused started his van and tried to run it over the complainant and Inder Singh pulled him, but his left feet were injured. On this report, a case was subsequently registered and the challan was filed before the learned trial court who tried the respondent who was acquitted of the charge, hence this appeal.

I have heard Mr.Ashutosh Burathoki, learned Additional Advocate General for the appellant and Mr.T.S.Chauhan, learned counsel for the respondent and have gone through the record.

The submissions made by the learned Additional Advocate General were that the statement of the complainant had been corroborated by PW Parmar Advocate and the guilt of the accused was clearly established, but the learned trial court wrongly acquitted the respondent.

On the other hand, submissions made by learned counsel for the respondent has supported the judgment for the reasons given therein supplementing it by the submission that independent witness PW Inder Singh has not supported the prosecution story and there has been delay in lodging the FIR and investigation was also started after 20 days and those infirmities coupled with the statements of prosecution witnesses which are contradictory, the guilt of the respondent was not established.

On a perusal of the record of the case, it is clear that most material witnesses in the present case can be said to be PW-2 Ram Parkash complainant, PW-7 R.S.Parmar eye witness and PW-3 Inder Singh whose statements deserve to be scrutinized by the court. PW-2 Ram Parkash complainant has stated that he was standing at the shop of the Pan seller where accused was giving beatings and he reiterated the allegations made in the complaint as mentioned above. He denied that the accused had stated at that time that the said mental sick person had jumped in front of his van and therefore he was giving beatings to him. He denied that he and $\frac{3}{4}$ persons there were under the influence of liquor and had

given beatings to the accused. He reiterated that he was rescued by PW Inder Singh. He denied that he suffered the injuries as a result of fall.

PW-7 R.S.Parmar, Advocate who was with him at that time has stated that a taxi came there and accused the driver of the taxi started beating the mentally sick person and when Ram Parkash and Inder Singh intervened, the accused caught hold of Ram Parkash from neck and gave him slap blows which was not specifically stated by PW-2. It was further stated that the accused sat in the taxi and tried to run the taxi over Ram Parkash and Inder Singh pulled him and then an injury was suffered on left feet by the complainant. He stated that the accused was under the influence of liquor and had intentionally tried to run over the complainant. He admitted that the shop of the said Panwala was open at that time while other shops were closed. He denied that he has deposed falsely since the complainant was his friend.

PW-3 Inder Singh the only independent witness who had allegedly rescued the complainant at that time clearly stated that he was only standing at the bus stand and no occurrence had taken place in his presence. He was declared as hostile and was cross-examined by the learned A.P.P. for the State. He admitted that the accused was known to him and he was friendly with him. However, he was specific that the occurrence had not taken place in his presence and there is nothing on record to show that since accused was known to him, he has deposed falsely.

On a perusal of the above evidence led by the prosecution it is clear that the statement of the complainant has been corroborated to some extent by PW-7 present there at that time and it appears that both of them had gone together to the pan shop. The only independent witness has not supported the prosecution story. It is also in evidence that apart from these witnesses mentioned above, the said pan owner and 2/3 boys were also present there, who had allegedly rescued the complainant, but none of them had been cited or produced as a witness. The occurrence

had taken place at the bus stand during summer season and it can not be said that the witnesses were not present there at that time or that some other persons had not witnessed the occurrence. A plea was taken in regard to delay in lodging the report, but the FIR was registered on the basis of the Rapat, which had been recorded within two hours and 15 minutes of the occurrence and therefore it cannot be said that there was any delay. However, apart from this, the learned trial court has also considered the question that the investigation had started after 20 days and no reasons have been assigned for delay in the investigation of the case. The learned trial court had come to the conclusion that the statements of prosecution witnesses are not reliable so as to hold that prosecution case has been proved and those findings recorded by the learned trial court cannot be said to be palpably wrong, manifestly erroneous or unsustainable in the eye of law. This court is not to re-appreciate the findings of the learned trial court, but it has to consider if these findings are perverse in any manner and it cannot be said in any manner that those findings are perverse vide which the respondent was acquitted of the charge framed against him and those findings do not call for any interference by this court. The appeal filed by the appellant is dismissed and findings of the learned trial court are affirmed. Bail bonds shall stand discharged forthwith.

December 15 ,2006(g)

(V.K.Ahuja),J.